

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

STICHTING PENSIOENFONDS ABP,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER, EDWARD  
M. SCOLNICK, DAVID W. ANSTICE, and  
PETER S. KIM

Defendants.

CASE NO. 2:05-CV-05060-SRC-CLW

NORGES BANK,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER,  
EDWARD M. SCOLNICK, DAVID W.  
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04021-SRC-CLW

[Caption continued on following page]

DEKA INVESTMENT GmbH, DEKA  
INTERNATIONAL S.A. LUXEMBURG, DEKA  
INTERNATIONAL (IRELAND) LIMITED,  
DEKA FUNDMASTER  
INVESTMENTGESELLSCHAFT MBH,  
INTERNATIONAL FUND MANAGEMENT  
S.A., MUNICH ERGO ASSET MANAGEMENT  
GmbH, INTERNATIONALE FONDS SERVICE  
AG, INTERNATIONALE  
KAPITALANLAGEGESELLSCHAFT MBH,  
METZLER INVESTMENT GmbH, and  
FRANKFURTER SERVICE  
KAPITALANLAGEGESELLSCHAFT mbH ,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER,  
EDWARD M. SCOLNICK, DAVID W.  
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04022-SRC-CLW

UNION ASSET MANAGEMENT HOLDING  
AG, OPPENHEIM PRAMERICA ASSET  
MANAGEMENT S.à.r.l., ERSTE-SPARINVEST  
KAPITALANLAGEGESELLSCHAFT m.b.H.,  
and OPPENHEIM  
KAPITALANLAGEGESELLSCHAFT m.b.H.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER,  
EDWARD M. SCOLNICK, DAVID W.  
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04023-SRC-CLW

[Caption continued on following page]

AFA LIVFÖRSÄKRINGSAKTIEBOLAG, AFA  
TRYGGHETSFÖRSÄKRINGSAKTIEBOLAG,  
AFA SJUKFÖRSÄKRINGSAKTIEBOLAG on  
its own behalf and on behalf of  
KOLLEKTIVAVTALSSTIFTELSEN  
TRYGGHETSFONDEN TSL, ALECTA  
PENSIONS FÖRSÄKRING ÖMSESIDIGT,  
SJUNDE AP-FONDEN, DANSKE INVEST  
ADMINISTRATION A/S, SWEDBANK ROBUR  
AB, AMF PENSION FONDFÖRVALTNING  
AB, ARBETSMARKNADSFÖRSÄKRINGAR  
PENSIONS FÖRSÄKRINGSAKTIEBOLAG,  
SKANDINAVISKA ENSKILDA BANKEN AB  
on its own behalf and on behalf of SEB  
INVESTMENT MANAGEMENT AB, SEB  
ASSET MANAGEMENT S.A. and GAMLA  
LIVFÖRSÄKRINGSAKTIEBOLAGET SEB  
TrYGG LIV,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER,  
EDWARD M. SCOLNICK, DAVID W.  
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04024-SRC-CLW

[Caption continued on following page]

ALLIANZ GLOBAL INVESTORS  
KAPITALANLAGEGESELLSCHAFT MbH;  
ALLIANZ GLOBAL INVESTORS  
LUXEMBOURG S.A.; and ALLIANZ GLOBAL  
INVESTORS IRELAND LIMITED,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER,  
EDWARD M. SCOLNICK, DAVID W.  
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04451-SRC-CLW

DWS INVESTMENT GmbH, PIONEER  
INVESTMENTS  
KAPITALANLAGEGESELLSCHAFT mbH,  
DEUTSCHE ASSET MANAGEMENT  
INVESTMENTGESELLSCHAFT mbH,  
WIENER STÄDTISCHE VERSICHERUNG AG  
VIENNA INSURANCE GROUP,  
LIECHTENSTEINISCHE LANDESBANK  
AKTIENGESELLSCHAFT, DWS (AUSTRIA)  
INVESTMENTGESELLSCHAFT mbH,  
LANDESBANK BERLIN INVESTMENT GmbH,  
and LRI LANDESBANK RHEINLAND-PFALZ  
INTERNATIONAL S.A.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER,  
EDWARD M. SCOLNICK, DAVID W.  
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04546-SRC-CLW

[Caption continued on following page]

KBC ASSET MANAGEMENT NV, PIONEER  
INVESTMENT MANAGEMENT LTD.,  
PIONEER INVESTMENT MANAGEMENT  
SGRpa, and PIONEER INVESTMENTS  
AUSTRIA GmbH,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER, EDWARD  
M. SCOLNICK, DAVID W. ANSTICE, and  
PETER S. KIM

Defendants.

CASE NO. 2:11-CV-06259-SRC-CLW

WHEREAS, pursuant to the Court's Order dated May 5, 2005, all pending and subsequently-filed Vioxx-related securities actions, including the above-captioned eight individual actions (the "Individual Actions") are "consolidated for all purposes" into *In re Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation*, MDL No. 1658 (the "MDL");

WHEREAS, on October 6, 2011, the Parties to the following seven Individual Actions: *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-cv-05060-SRC-CLW; *AFA Livförsäkringsaktiebolag, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04024-SRC-CLW; *Allianz Global Investors Kapitalanlagegesellschaft MbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04451-SRC-CLW; *Norges Bank v. Merck & Co., Inc., et al.*, No. 07-cv-04021-SRC-CLW; *Deka Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04022-SRC-CLW; *Union Asset Management Holding AG, et*

*al. v. Merck & Co., Inc., et al.*, No. 07-cv-04023-SRC-CLW; and *DWS Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04546-SRC-CLW, entered into a stipulation, which this Court “so ordered,” setting the deadline for Defendant Merck & Co., Inc. (“Merck”), all individual defendants other than Defendant Scolnick (the “Merck Individual Defendants” and, together with Merck, the “Merck Defendants”), and Defendant Scolnick (together, the “Defendants”) to move or otherwise respond to the Second Amended Complaint in *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-cv-05060-SRC-CLW (the “ABP Action”) to January 20, 2012, and stayed the time for Defendants to move or otherwise respond to the six remaining actions until 45 days after a decision on any motions in the ABP action;

WHEREAS, on November 8, 2011, the Parties to *KBC Asset Management NV, et al. v. Merck & Co., Inc., et al.*, No. 2:11-cv-06259-SRC-CLW (the “KBC Action”), entered into a stipulation, which this Court “so ordered,” in which they agreed to treat the KBC Action as one of the Individual Actions and extend Defendants’ time to move or otherwise respond to the KBC Action until 45 days after a decision on any motions to dismiss in the ABP Action;

WHEREAS, this Court issued an opinion on Defendants’ motions to dismiss the Second Amended Complaint in the ABP Action on August 1, 2012 (the “August 1 Opinion”);

WHEREAS, in the August 1 Opinion, this Court granted Defendants’ motions to dismiss the Rule 10b-5(b) claim to the extent predicated on statements the Court found inactionable;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the Rule 10b-5(a) and (c) "scheme liability" claim;

WHEREAS, in the August 1 Opinion, this Court granted the Merck Defendants' motion to dismiss the § 20(a) control person claim as to Defendants Gilmartin, Anstice, Frazier, Lewent, and Kim;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of common law fraud for inducing Plaintiff to purchase Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of common law fraud for inducing Plaintiff to hold Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of negligent misrepresentation for inducing Plaintiff to purchase Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of negligent misrepresentation for inducing Plaintiff to hold Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of civil conspiracy;

WHEREAS, the parties, claims, and allegations in the ABP Second Amended Complaint are substantially identical to the parties, claims, and allegations in the operative complaints in the other seven Individual Actions;

WHEREAS, the Parties do not wish to re-brief arguments already considered and ruled upon by this Court in the ABP Action;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel that:

1. The Parties to the above-captioned actions agree that any arguments raised by Defendants and/or Plaintiff in the ABP Action on Defendants' motions to dismiss the Second Amended Complaint shall not be re-briefed in the seven remaining Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and opposition to such motions in the seven remaining Individual Actions.

2. The Parties to the above-captioned actions agree that the claims dismissed in the August 1 Opinion in the ABP Action shall be deemed dismissed to the same extent in the seven remaining Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and opposition to such motions in the seven remaining Individual Actions. The claims dismissed in the August 1 Opinion are:

- a. The Rule 10b-5(b) claim to the extent predicated on statements the Court found inactionable;
- b. The Rule 10b-5(a) and (c) "scheme liability" claim;
- c. The § 20(a) control person claim against Defendants Gilmartin, Anstice, Frazier, Lewent, and Kim;
- d. The common law fraud claim for inducing Plaintiff to purchase Merck stock;



- e. The common law fraud claim for inducing Plaintiff to hold its Merck stock;
- f. The negligent misrepresentation claim for inducing Plaintiff to purchase Merck stock;
- g. The negligent misrepresentation claim for inducing Plaintiff to hold its Merck stock; and
- h. The civil conspiracy claim.

3. Nothing in this stipulation shall preclude the Parties to the seven remaining Individual Actions from advancing, in connection with any motion to dismiss, any argument that was not raised or decided in the ABP action.

4. Defendants have until September 17, 2012 to file and serve an answer to the Second Amended Complaint in the ABP Action.

DATED: August 13, 2012

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DATED: August 13, 2012

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and on behalf of Kollektivavtalsstiftelsen  
Trygghetsfonden TSL, Alecta  
pensionsförsäkring ömsesidigt, Fjärde AP-  
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Skandinaviska Enskilda Banken AB on its own  
behalf and on behalf of SEB Investment  
Management AB, SEB Asset Management  
S.A., and Gamla Livförsäkringsaktiebolaget  
SEB Trygg Liv; Allianz Global Investors  
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DATED: August 13, 2012

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DATED: August 10, 2012

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SO ORDERED: \_\_\_\_\_, 2012

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Cathy L. Waldor  
United States Magistrate Judge